

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

<b>IN RE:</b>	)	
	)	
<b>KING DAN RIVES and MARYDEL HART RIVES,</b>	)	<b>CHAPTER 13</b>
	)	<b>CASE NO. 16-03686-5-SWH</b>
<b>DEBTORS.</b>	)	
	)	

---

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF 11 U.S.C. § 362**

NOW COMES the Movant, Timothy Saleeby, by and through his undersigned counsel, pursuant to 11 U.S.C. § 362, and moves the Court for Relief from the Automatic Stay for the purpose of commencing an action in summary ejectment against the Debtor, and in support thereof shows unto the Court the following:

1. On July 15, 2016, King Dan Rives and Marydel Hary Rives (also referred to as “Debtors”) filed a voluntary petition for relief under Title 11, Chapter 13 of the United States Code. As a result of said filing, John F. Logan is the duly appointed, qualified, and acting Trustee in this proceeding.

2. The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334 and 157(b).

3. As a result of the Debtors’ Chapter 13 filing, the automatic stay has been in effect pursuant to 11 U.S.C. § 362.

4. On or about January 15, 2016, Timothy Saleeby (also referred to as “Saleeby” or “Creditor”) entered into a Residential Rental Contract (also referred to as “lease”) with the Debtor for the use of premises located at 8308 Grey Abbey Place, Raleigh, North Carolina 27615. The lease had a rental term of one year beginning on January 15, 2016 and ending January 15, 2017. A true and accurate copy of the lease is attached hereto and incorporated herein by reference as Exhibit “A.”

5 Saleeby is a creditor of the Debtors as that term is defined in 11 U.S.C. § 101(10).

6. The Debtors have not made any payments pursuant to the terms of Exhibit A since on or about June 22, 2016. The Debtors are currently delinquent in their rent payments to Saleeby in the amount of \$4,800.00 which is comprised of the pre-petition July 2016 payment, post-petition August 2016 payment, and post-petition September 2016 payment. Under the terms of Paragraph 9

of Exhibit A, the Debtors were required to make monthly payments to Saleeby on or before the first day of each month. The Debtors have provided no adequate protection to Saleeby. Additionally, the Debtors made a partial payment in the amount of \$800.00 to Saleeby on or about August 18, 2016 which was dishonored for insufficient funds by the Debtors' bank.

7. Pursuant to 11 U.S.C. § 362(d), cause exists for termination of the automatic stay. Additionally, the leased property is not necessary for an effective organization by the Debtors. Therefore, Saleeby is entitled to relief from the automatic stay pursuant to proceed with an action in summary ejectment in state court.

WHEREFORE, the Movant, Timothy Saleeby prays unto the Court as follows:

1. That the Court modify and lift the automatic stay of 11 U.S.C. § 362(a) to allow the Movant to proceed with summary ejectment of the Debtor in state court from the rental premises located at 8308 Grey Abbey Place, Raleigh, North Carolina 27615;
2. That the Movant be allowed to file a proof of claim for any deficiency balance owed by the Debtors under the terms of the lease;
3. That the Court modify Bankruptcy Rule 4001(a)(3) so that the ten-day waiting period following entry of an Order for Relief from the Automatic Stay is not applicable; and
4. For such other and further relief as the Court may deem just and proper.

This the 15th day of September, 2016.

/s/ Joshua N. Levy

Joshua N. Levy

Attorney for Movant

NCSB #27577

LEVY LAW OFFICES

140-B Wind Chime Court

Raleigh, NC 27615

Telephone: (919) 846-0125

Fax: (919) 846-0315

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION**

**IN RE:**

**KING DAN RIVES and  
MARYDEL HART RIVES,**

**DEBTORS.**

)  
)  
)  
)  
)  
)  
)

**CHAPTER 13  
CASE NO. 16-03686-5-SWH**

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF 11 U.S.C.**

**§ 362**

Timothy Saleeby has filed papers with the Court seeking relief from the automatic stay of 11 U.S.C § 362.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the Motion, or if you want the Court to consider your views on the Motion, then within fourteen (14) days, unless otherwise ordered, you or your attorney must file with the Court, pursuant to Local Rule 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing at:

United States Bankruptcy Court  
300 Fayetteville Street Mall, Room 209  
P.O. Box 1441  
Raleigh, NC 27602-1441

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to the Movant's Attorney, the Debtor, the Debtors' Attorney, the Chapter 13 Trustee at the addresses list below:

Joshua N. Levy	John F. Logan	Erich M. Fabricius	King Dan Rives
Levy Law Offices	Chapter 13 Trustee	Fabricius & Fabricius, PLLC	Marydel Hart Rives
140-B Wind Chime Court	P.O. Box 61039	P.O. Box 1230	8308 Grey Abbey Pl.
Raleigh, NC 27615	Raleigh, NC 27661	Knightdale, NC 27545-1230	Raleigh, NC 27615

If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the Motion at a date, time and place to be later set and all parties will be notified accordingly.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion or Objection and may enter an Order granting that relief.

Date: September 15, 2016

/s/ Joshua N. Levy  
Joshua N. Levy  
Attorney for Movant  
NCSB #27577  
Levy Law Offices  
140-B Wind Chime Court  
Raleigh, NC 27615

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that the undersigned served a copy of the foregoing **MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF 11 U.S.C. § 362** and **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF 11 U.S.C. § 362** by first class mail by depositing the same in a post-paid wrapper address to the following individuals at the addresses as shown below in a post office box or official depository under the exclusive care and custody of the United States Postal Service in the manner prescribed by law, or if such interested party is an electronic filing user, by serving such interested party by electronic transmission, pursuant to Local Rule 5005-4(9)(b):

John F. Logan  
Chapter 13 Trustee  
P.O. Box 61039  
Raleigh, NC 27661

(VIA CM/ECF)

Erich M. Fabricius  
Fabricius & Fabricius, PLLC  
P.O. Box 1230  
Knightdale NC 27545-1230

(VIA CM/ECF)

King Dan Rives  
Marydel Hart Rives  
8308 Grey Abbey Pl.  
Raleigh, NC 27615

(VIA U.S. MAIL)

THIS the 15th day of September, 2016.

/s/ Joshua N. Levy  
Joshua N. Levy  
Attorney for Movant  
NCSB #27577  
140-B Wind Chime Court  
Raleigh, NC 27615  
Telephone: (919) 846-0125  
Fax: (919) 846-0315